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10/663,912	09/17/2003	Stephany Jean Head	4803.001	2623

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EXAMINER

POND, ROBERT M

ART UNIT	PAPER NUMBER
3625	

MAIL DATE	DELIVERY MODE
09/14/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/663,912

**Applicant(s)**

HEAD, STEPHANY JEAN

**Examiner**

Robert M. Pond

**Art Unit**

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-15 is/are pending in the application.
- 4a) Of the above claim(s) 1-7 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8 and 10-14 is/are rejected.
- 7) ☒ Claim(s) 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

The Applicant amended independent claim 8 with subject matter not previously claimed, and newly added claim 15. Claim 9 was canceled. The Applicant withdrew claims 1-7 in the reply entered 20 October 2006. The Examiner's thanks the Applicant for noting the typographical error. All pending claims 8 and 10-15 were examined in this non-final office action.

### ***Response to Arguments***

Regarding subjective assessments, the Applicant's claimed invention of "assigning a numerical value to each of a plurality of change in wealth factors of an organization" requires a subjective assessment of the numerical value to be assigned by a user interacting with the system of the claimed invention.

Arguments pertaining to Thompson apply to the Applicant's claimed invention.

The Applicant notes the claimed invention is based on objective factors in contrast to Thompson being subjective. The Examiner respectfully disagrees with the broad brush given to Thompson. Like the Applicant's claimed invention, Thompson starts with subjective assessments and proceeds to quantify subjective aspects of the opportunity to transform a "gut feel" into a quantifiable win probability.

This Examiner, however, finds the Applicant's arguments persuasive in light of further arguments. Thompson has been withdrawn in favor of Cressman, Jr. (PTO-892, Item: U). Further arguments pertaining to Thompson are therefore rendered moot.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

1. Claims 9, 11-13 are rejected under 35 U.S.C. 101 because the claimed invention lacks a useful, concrete, and tangible result. The claimed invention fails to positively recite a method claim element in at least the independent claims that imparts a useful, concrete, and tangible result. The claimed invention constitutes mental steps.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. **Claims 8 and 12-14 are rejected under 35 USC 103(a) as being unpatentable over Cressman Jr. (PTO-892, Item: U).**

Cressman Jr. teaches develop pricing policy on the basis of sound models of customer and competitor behavior. Cressman Jr. teaches a good starting point

for understanding how customers perceive competitive offerings is the generation of a customer value map and calculating the value positions of competitors (U: see page 8).

- assigning a numerical value to each of a plurality of change in wealth factors of an organization; list the criteria the customer uses to make purchase decision excluding price. Separate into product and service components. Weight the features listed in proportion to how important to the customer each offering feature is (excluding price). The weights must sum to 100. Rate the organization on each feature on the basis of 1 (does not meet customer needs) to 10 (perfectly meets needs) scale (U: see at least page 8).
- tallying the assigned numerical values to provide a total value; rate the organization; rate the organization by calculating the competitor's value position as the sum of each feature's performance score times the feature's weight (U: see at least page 9).
- comparing the total numerical values to a predetermined value range; assigning a neutral value position to the organization if the total value is within the predetermined value range; assigning a positive value position to the organization if the total value is greater than the predetermined value range; and assigning a negative value position to the organization if the total value is less than the predetermined value range.

using the value map to understand how customer's perceive offerings as depicted in Exhibit 2. Customer expectations center around some ideal point with a minimum acceptable level and maximum acceptable level (please note: neutral range), wherein below this threshold, the customer perceives the organization as offering poor quality and above the range, the perception may be the organization is delivering too much and is thus too expensive (U: see Exhibit 2; page 7). Although Cressman, Jr. does not mention assigning poor quality perception (i.e. below the neutral range) as a negative value position, it would have been obvious to one of ordinary skill in the art at time the invention was made that the customer view positions below the neutral range as a negative position for the organization. Although Cressman, Jr. does not mention assigning the organization perceived to be delivering too much and thus being perceived as too expensive a value position opposite of one having a perceived negative position, it would have been obvious to one of ordinary skill in the art at time the invention was made that the customer view positions above the neutral range (i.e. highest acceptable level as depicted in Exhibit 2) as a positive position for the organization representing a position above the neutral range.

Cressman teaches all the above as noted under the 103(a) rejection and further teaches analyzing components needed to make good pricing decision. Cressman teaches the third component needed to make good pricing decisions

is an understanding of the competition's strategies and costs. Traditionally, managers have used SWOT analysis (strengths/weaknesses/opportunities/threats). SWOT analysis is not entirely helpful for making pricing decisions, however, because it ignores a competitor's strategic intent. Furthermore, SWOT analysis is limited in that it often does not address the question, "A strength (or weakness) relative to what?" From a pricing perspective, the following four-step process improves understanding of competitors:

- Strategic Intent: What does the competitor intend to do? Which customers (or customer groups) are critical "must win" segments for the competitor? How does the competitor support its intent with product/service positioning? How does the competitor use its pricing policy?
- Capabilities and Barriers: What does the competitor have that will support achieving its strategic intent? What barriers will prevent the competitor from achieving its strategic intent? Please note: change in business conditions (i.e. financial, industry position, etc).
- Likely Outcome: Comparing the competitor's strategic intent and its capabilities/barriers, what will most likely happen? Will the competitor succeed or fail? What will success look like? What will failure look like?

- Impact: Given the likely outcome, what will the impact be on your firm?

Will the competitor's success/failure help you? Will the competitor's success/failure hurt you? How? What must you do about this?

It would have been obvious to one of ordinary skill in the art at time the invention was made that a change in a competing vendor business factors (i.e. wealth factors) would alter a competing vendor's value position.

Pertaining to system claims 13 and 14

Claims 13 and 14 are rejected based on the same rationale as noted above. Although Cressman, Jr. does not specifically mention all the analysis and modeling being performed using a computer, it would have been obvious to one of ordinary skill in the art at time the inventions was made that performing analysis and displaying the results is a fundamental use of computers.

**2. Claim 11 is rejected under 35 USC 103(a) as being unpatentable over Cressman Jr. (PTO-892, Item: U).**

Cressman teaches all the above as noted under the 103(a) rejection and teaches and suggests i) calculating value positions of a competing vendor based on non-price factors associated with a company's product and service, ii) assessing a vendor's value position as either being neutral, negative, or positive, and further teaches using mapping value positions to ascertain a company's position relative to competitors for a given buying opportunity, and further teaches changing pricing decisions based on value positions. Although



Cressman, Jr. does not mention framing a first response if a neutral value position is assigned to the organization and framing a second response if one of a positive value position and a negative value position is assigned to the organization, it would have been obvious to one of ordinary skill in the art at time the invention was made to ascertain the purpose of a mapping value positions of your competitors is to either provide an offering that within a buying organization's neutral position range on a first or subsequent response.

- 3. Claim 10 is rejected under 35 USC 103(a) as being unpatentable over Cressman, Jr. (PTO-892, Item: U) and Official Notice (regarding notoriously old and well known in the arts).**

Cressman, Jr. teaches and suggests all the above as noted under the 103(a) rejection and teaches business factors having an influence an organization's value position and modeling customer and competitive behavior using a variety of analysis techniques, but do not specifically disclose wealth factors are selected from the group consisting of a merger, an acquisition, a divestment, a regulation change, a change in market demand, a change in margin, a change in shareholder value, a change in distribution channels, a change in revenue streams, a change in credit rating, a change in facilities requirements, a change in competition, a change in business requirements, a change in support systems, a phase-out of applications, a change in techtronic trends, a default on a contract, a reduction in force, an ERO, a change in personnel, a change in

business lines, a change in product structure, a Securities and Exchange Commission investigation, and a security breach. One the other hand one of ordinary skill in the art would ascertain that internal and external factors beyond funding contribute to a buying organization's procurement needs. For example, examining the buying organization's annual report (if public) or filing with the SEC covers a litany of internal and external business factors that influence a buying organization's procurement needs. Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the Thompson and Official Notice to address a litany of internal and external business factors as ascertained by one of ordinary skill in the art, in order to account for other factors that influence an organization's procurement needs.

***Allowable Subject Matter***

Claim 15 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The Examiner is suggesting the Applicant consider a telephone interview for further discussion.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Pond whose telephone number is 571-272-6760. The examiner can normally be reached on 8:30AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Robert M. Pond  
Primary Examiner  
August 20, 2007